

REMARKS

Claims 9, 26, 31, 34 and 37 have been amended. Claim 37 has been canceled. Claims 9-15, 26, 27, 31, 34, 37 and 49-54 remain in the application for consideration. In view of the following remarks, Applicant respectfully requests reconsideration and allowance of the subject application.

§101 Rejections

Claims 37 stands rejected under 35 U.S.C. § 101 for, in the Office's opinion, being directed to non-statutory subject matter. While Applicant disagrees with the Office' rejection and reasoning, Applicant has canceled the claim without prejudice and reserves its right to further pursue subject matter consistent with this claim.

§112 Rejections

Claims 15 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Office argues that claims 15 and 16 do not specify how the module and computer readable medium perform the method of claim 9. Claim 16 was previously canceled; accordingly, the rejection of claim 16 is moot. Applicant further submits that claim 15 is allowable as written. Applicant does not understand the Office's rejection of this claim and submits that there is nothing inappropriate with regard to this claim.

1 **§102 Rejections**

2 Claims 9-10, 12, 14-15, 26-27, 31, 34 and 49-54 stand rejected under 35
3 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,421,348 to Gaudet et al.
4 (hereinafter "Gaudet").

5
6 **§103 Rejections**

7 Claims 11, 13, 27 and 37 stand rejected under 35 U.S.C. §103(a) as being
8 obvious over Gaudet in view of Gunninberg et al., "How a Large ATM MTU
9 Causes Deadlocks in TCP Data Transfers", IEEE/ACM Transactions on
10 Networking, Vol. 3, Issues 4, (1995) (hereinafter "Gunninberg").

11
12 **The Claims**

13 **Claim 9** has been amended, and as amended recites a method for
14 facilitating speedy communication of packets between entities on a network
15 through a communication device, the method comprising (added language appears
16 in bold italics):

- 17
18 • sending a set of packets from a sending entity to a receiving entity,
19 wherein a transmission delay between packets in the set is intolerable;
20 • immediately thereafter, sending at least one "push" packet to avert a
21 transmission delay between packets in the set, wherein the "push"
22 packet ***is specifically configured to*** force the transmission of the set of
23 packets by the communication device to avoid the transmission delay
24 caused by packet buffering by the communication device on the
25 network.

26
27 In making out the rejection of this claim, the Office argues that Gaudet
28 anticipates claim 1. Specifically, the Office argues that Gaudet teaches a method

1 for facilitating speedy communication of packets between entities on a network
2 through a communication device, the method comprising: sending a set of packets
3 from a sending entity to a receiving entity, wherein a transmission delay between
4 packets in the set is intolerable (**citing to column 5, lines 7-29**); immediately
5 thereafter, sending at least one “push” packet to avert a transmission delay
6 between packets in the set, wherein the “push” packet forces the transmission of
7 the set of packets by the communication device to avoid the transmission delay
8 caused by packet buffering by the communication device on the network. (**citing**
9 **to column 5, lines 30-43**). Applicant disagrees, and respectfully traverses the
10 rejection.

11 Applicant believes that this claim is allowable as written because, among
12 other things, Gaudet does not disclose or suggest a push packet as that term is
13 utilized in this claim and described in Applicant’s specification.

14 However, in the interest of advancing prosecution, Applicant has amended
15 this claim to clarify that the “push” packet *is specifically configured to* force the
16 transmission of the set of packets by the communication device. This amendment
17 patentably distinguishes the claimed subject matter from Gaudet. This amendment is
18 also consistent with Applicant’s specification which teaches that “in order to address
19 the Nagle Algorithm at a proxy, a *large third packet* is sent after the pair of
20 measurement packets. If the proxy is holding the second packet of the packet-pair,
21 the *third packet pushes it along*. Hence, this third packet is called the “push”
22 *packet*.” (Applicant’s Specification, pages 27-28). Gaudet does not teach or in any
23 way suggest a “push” packet that *is specifically configured to force the*
24 *transmission* of the set of packets by the communication device.

25 Accordingly, for at least this reason, this claim is allowable.

1 **Claims 10-15 and 49-51** depend from claim 9 and are allowable as
2 depending from an allowable base claim. These claims are also allowable for their
3 own recited features which, in combination with those recited in claim 9, are
4 neither shown nor suggested by Gaudet or any of the references of record, either
5 singly or in combination with one another. In addition, to the extent that claim 9 is
6 allowable, the rejection of claims 11 and 13 over the combination with
7 Gunninberg is not seen to add anything of significance.

8 **Claim 26** has been amended, and as amended recites a method for
9 facilitating bandwidth measurement between two entities on a network through a
10 communication device, the method comprising (added language appears in the
11 bold italics):

- 12 • sending a pair of bandwidth-measurement packets from a sending entity
13 to a receiving entity, wherein a transmission delay between packets in
14 the pair is intolerable;
- 15 • immediately thereafter, sending at least one “push” packet to avert a
16 transmission delay between packets in the pair, wherein the “push”
17 packet ***is specifically configured to*** force the transmission of the set of
18 packets by the communication device to avoid the transmission delay
19 caused by packet buffering by the communication device on the
20 network.

21 In making out the rejection of this claim, the Office uses the same argument
22 that was used to make out the rejection of claim 1. Claim 26 has been amended in
23 a manner consistent with the amendment of claim 1. Accordingly, for the same
24 reasons as discussed with regards to claim 1, this claim is allowable.

25 **Claims 27 and 52-54** depend from claim 26 and are allowable as
depending from an allowable base claim. These claims are also allowable for their

1 own recited features which, in combination with those recited in claim 26, are
2 neither shown nor suggested by Gaudet or any of the references of record, either
3 singly or in combination with one another. In addition, to the extent that claim 26
4 is allowable, the rejection of claim 27 over the combination with Gunninberg is
5 not seen to add anything of significance.

6 **Claim 31** has been amended, and as amended recites a computer-readable
7 medium having computer-executable instructions that, when executed by a
8 computer, perform a method to facilitate speedy communication of packets
9 between entities on a network through a communication device, the method
10 comprising (added language appears in bold italics):

- 11 • sending a set of packets from a sending entity to a receiving entity,
12 wherein a transmission delay between packets in the set is intolerable;
- 13 • immediately thereafter, sending at least one "push" packet to avert a
14 transmission delay between packets in the set, wherein the "push"
15 packet **is specifically configured to** force the transmission of the set of
16 packets by the communication device to avoid the transmission delay
17 caused by packet buffering by the communication device on the
18 network.

19 In making out the rejection of this claim, the Office uses the same argument
20 that was used to make out the rejection of claim 1. Claim 31 has been amended in
21 a manner consistent with the amendment of claim 1. Accordingly, for the same
22 reasons as discussed with regards to claim 1, this claim is allowable.

23 **Claim 34** has been amended, and as amended recites an apparatus
24 comprising (added language appears in bold italics):

- 25 • a processor;
- a transmission-delay avoider executable on the processor to:

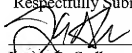
- send a set of packets from a sending entity to a receiving entity through a communication device, wherein a transmission delay between packets in the set is intolerable;
- immediately thereafter, send at least one "push" packet to avert a transmission delay between packets in the set, wherein the "push" packet *is specifically configured to* force the transmission of the set of packets by the communication device to avoid the transmission delay caused by packet buffering by the communication device on the network.

In making out the rejection of this claim, the Office uses the same argument that was used to make out the rejection of claim 1. Claim 34 has been amended in a manner consistent with the amendment of claim 1. Accordingly, for the same reasons as discussed with regards to claim 1, this claim is allowable.

Conclusion

All of the claims are in condition for allowance. Accordingly, Applicant requests a Notice of Allowability be issued forthwith. If the Office's next anticipated action is to be anything other than issuance of a Notice of Allowability, Applicant respectfully requests a telephone call for the purpose of scheduling an interview.

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Respectfully Submitted,
By: 
Lance R. Sadler
Reg. No. 38,605
(509) 324-9256